

ARIZONA SUPREME COURT

THE ESTATE OF MAGDALENA RIOS
DE DOMINGUEZ,

Plaintiff/Appellant,

vs.

RENEE KAY DOMINGUEZ,

Defendant/Appellee.

Arizona Supreme Court
No. CV-24-0102-PR

Court of Appeals Division One
No. 1 CA-CV 23-0363

Maricopa County
Superior Court
Nos. CV2020-011404
CV2020-013833
CV2022-001764
(Consolidated)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF FACTS	3
I. Magdalena and Isidro Convey the Property to Renee and Jose	3
II. Magdalena Sues Renee Seventeen Years after the Deed is Recorded	4
III. The Court Grants Renee’s First Motion for Summary Judgment.....	4
IV. The Estate Refuses to Release the Lis Pendens on the Property	7
V. The Court of Appeals Affirms the Trial Court’s Decision	8
ARGUMENT.....	10
I. The Court of Appeals Correctly Held an Allegedly Forged Deed Satisfies § 12-524’s “Recorded Deed” Requirement	10
II. The Court of Appeals Properly Declined to Review Equitable Tolling.....	13
A. The Estate Waived Equitable Tolling on the Quiet Title Claim.....	13
B. The Estate Waived Equitable Tolling on the § 33-420 Claim.....	15
i. The Estate never Reasserted its Equitable Tolling Argument.....	16
ii. The Estate Cannot Raise New Theories in a Reply.....	18
C. Magdalena Failed to Establish a Material Factual Dispute.....	18
CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<u><i>Aritex Land Co. v. Baker,</i></u> 14 Ariz. App. 266 (1971)	17
<u><i>Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Trust of Phx., Inc.,</i></u> 197 Ariz. 535 (App. 2001)	12
<u><i>Dawson v. Withycombe,</i></u> 216 Ariz. 84 (App. 2007)	18
<u><i>Englert v. Carondelet Health Network,</i></u> 199 Ariz. 21 (App. 2000)	15
<u><i>Henderson v. Tejada,</i></u> 26 Ariz. App. 462 (App. 1976).....	12
<u><i>Manicom v. CitiMortgage, Inc.,</i></u> 236 Ariz. 153 (App. 2014)	19
<u><i>McCloud v. Ariz. Dept. of Pub. Safety,</i></u> 217 Ariz. 82 (App. 2007)	19
<u><i>McGovern v. McGovern,</i></u> 201 Ariz. 172 (App. 2001)	15
<u><i>Nicholas v. Giles,</i></u> 102 Ariz. 130 (1967).....	11, 13
<u><i>Quality Plastics, Inc. v. Moore,</i></u> 131 Ariz. 238 (1981).....	11, 12
<u><i>Ruesga v. Kindred Nursing Centers, L.L.C.,</i></u> 215 Ariz. 589 (App. 2007)	17, 18
<u><i>Ramsey v. Yavapai Family Advocacy Ctr.,</i></u> 225 Ariz. 132 (App. 2010)	15
<u><i>Sparks v. Douglas & Sparks Realty Co.,</i></u> 19 Ariz. 123 (App. 1917)	11

Statutes

A.R.S. § 12-524passim
A.R.S. § 12-5252, 6, 9
A.R.S. § 12-5435, 7, 14
A.R.S. § 12-550 9
A.R.S. § 12-110319
A.R.S. § 33-420passim

Rules

Ariz. R. Civ. App. P. 2119

INTRODUCTION

This Court’s review largely concerns one question: can a party that failed to timely bring a quiet title claim evade A.R.S. § [12-524](#)’s five-year statute of limitations simply by claiming a deed—recorded seventeen years prior—is fraudulent?

Magdalena Rios de Dominguez (“Magdalena”)¹ and Isidro Dominguez (“Isidro”) had a son named Jose Dominguez (“Jose”). In 1995, Jose purchased a vacant lot located at 3125 N 313th Avenue, Buckeye, Arizona 85396 (“Property”). Jose similarly purchased a residential home located at 4000 W Grant Street, Phoenix, Arizona 85009 around this time (“Home”).² Jose titled the Property and Home to his parents, Magdalena and Isidro. Jose did so because Jose’s line of work caused him to fear the possibility of unwanted parties discovering where Jose lived.

Jose married Appellee Renee Kay Dominguez (“Renee”). Shortly after, Isidro and Magdalena executed a notarized warranty deed conveying the Property to Jose and Renee (“Deed”). Renee and Jose recorded the Deed in November 2003. Isidro

¹ The parties, having common last names, are respectfully referred to by their first names to avoid confusion.

² The underlying action also sought to quiet title to the Home and a third property. The claim against the third property was dismissed as the property was sold prior to the litigation. And the trial court quieted the Home’s title in Renee’s favor on summary judgment. The Estate did not appeal any claims concerning the Home or third party, leaving only the quiet title claim against the Property at issue on appeal.

and Magdalena also conveyed the Home to Jose and Renee, where the newly married couple raised a family together over the following decades.

Isidro passed away in 2012 and Jose was, we understand, murdered in Mexico in early 2020. Magdalena sued Renee in September 2020, bringing a claim to quiet the Property's title in Magdalena's favor and another claim against Renee for clouding the Property's title by allegedly forging and recording the Deed in violation of A.R.S. § [33-420](#). Magdalena also recorded a *Notice of Lis Pendens* ("Lis Pendens") on the Property. Renee brought a competing quiet title claim against Magdalena along with a § [33-420](#) claim associated with the Lis Pendens. During the litigation, Magdalena passed away and the Estate of Magdalena de Dominguez ("Estate") assumed Magdalena's role as the real party in interest.

The trial court entered summary judgment in Renee's favor on the parties' competing claims, finding that: (1) § [12-524](#)'s five-year statute of limitations barred Magdalena from bringing a quiet title claim *seventeen* years after the Deed's recording—even if Magdalena alleged, baselessly, that the Deed was forged; and (2) because Magdalena was not the Property's owner at the time she filed her claims, she lacked standing to bring a § [33-420](#) claim on a Property she did not own.

The Court of Appeals affirmed the trial court's rulings, citing this Court's opinions dating back to 1917, noting the Legislature's decision not to include a forgery exception in § [12-524](#) like it did in [A.R.S. § 12-525](#), and expressly rejecting

the Estate's request to adopt other states' case law. This Court granted review to determine whether the Court of Appeals properly held that: (1) the Estate cannot escape § [12-524](#)'s five-year statute of limitations by claiming the Deed is forged; and (2) the Estate waived its arguments concerning equitable tolling.

STATEMENT OF FACTS³

I. Magdalena and Isidro convey the Property to Renee and Jose

Magdalena and Isidro married each other in 1964. Magdalena and Isidro had a son named Jose. In 1995, Jose purchased the Property. After he paid the Property's purchase price, Jose titled the Property to Magdalena and Isidro. Jose married Renee a few years after purchasing the Property.

On April 26, 2002, Isidro and Magdalena executed a notarized warranty Deed conveying their interests in the Property to Jose and Renee. [Appendix at pg. 1]. Jose and Renee recorded the Deed in November 2003. [Appendix at pg. 1]. Renee paid all taxes assessed to the Property from that point forward. [Appendix at pgs. 6–7, 84–116].

³ Renee is cognizant of this Court's directive that supplemental briefing shall not merely "repeat the contents of [Renee's] . . . Response" to the Estate's Petition for Review. Renee's Statement of Facts largely mirrors the Statement of Facts contained in her Response to the Estate's Petition for Review solely so the Court can reference identified terms and locate citations without referencing prior filings.

Isidro passed away in 2012. Jose disappeared around January 2020 before Mexican law enforcement discovered his remains months later.

II. Magdalena Sues Renee Seventeen Years after the Deed is Recorded

In September 2020, Magdalena filed her *Complaint* in Maricopa County Case No. CV2020-011404 (“Magdalena’s Complaint”). Magdalena’s Complaint raised two claims: (1) a claim seeking to quiet the Property’s title in Magdalena’s favor; and (2) a § [33-420](#) claim for recording a “forged” Deed. Magdalena then filed a Lis Pendens on the Property shortly after.

In October 2020, Renee filed her *Verified Complaint* in Maricopa County Case No. CV2020-013833 (“Renee’s Complaint”), bringing a claim to quiet the Property’s title in Renee’s favor and another claim against Magdalena for clouding the Property’s title in violation of § [33-420](#) by recording the Lis Pendens. The trial court consolidated Renee’s Complaint and Magdalena’s Complaint into a single lawsuit.

III. The Court Grants Renee’s First Motion for Summary Judgment

In April 2021, Renee moved for summary judgment, asking the trial court to: (1) dismiss Magdalena’s quiet title claim and § [33-420](#) claim; (2) quiet the Property’s title in Renee’s favor; and (3) enter judgment in Renee’s favor on her § [33-420](#) claim (“Renee’s First Motion for Summary Judgment”). Renee argued that Magdalena’s quiet title claim was time-barred under § [12-524](#)’s five-year statute of limitations.

Magdalena responded to Renee’s First Motion for Summary Judgment in June 2021 (“Response to First Motion for Summary Judgment”). [Estate’s Appendix at pg. 27]. Magdalena expressly conceded the Property is “a lot located in a city or town” subject to § [12-524](#)’s five-year statute of limitations. [See Estate’s Appendix at pg. 37 (“Magdalena does not dispute that the Properties in question are “lots” as the term is applied in A.R.S. § [12-524](#).”)]. Magdalena nevertheless urged the trial court to apply the “discovery rule” under A.R.S. § [12-543](#) or the doctrine of equitable tolling to her § [33-420](#) claim, alleging that she only discovered the Deed in 2020. [Estate’s Appendix at pgs. 37–38]. Magdalena’s Response to First Motion for Summary Judgment lacked *any* argument that § [12-543](#)’s discovery rule, or the doctrine of equitable tolling, should apply to her quiet title claim. [See *generally* Estate’s Appendix at pg. 27; *see also* Appendix at pg. 132, ¶ 20].

The trial court granted Renee’s First Motion for Summary Judgment, entering summary judgment in Renee’s favor on both competing quiet title claims but declining to enter summary judgment on the competing § [33-420](#) claims (“First Order”). [Estate’s Appendix at pgs. 4–6].

According to the trial court, “[t]here is no dispute” that Renee satisfied “the first and third elements” and “no material fact question [exists] on the fourth element.” [Estate’s Appendix at pg. 5]. Namely because Renee provided a Declaration confirming she paid the Property’s taxes and receipts from the Maricopa

County Treasurer’s Office confirming as much [Appendix at pgs. 6–7, 84–116]—while “Magdalena offer[ed] no controverting evidence.” [Estate’s Appendix at pg. 5].

The trial court explained the second element was slightly “more difficult” and acknowledged that, even if it assumed the Deed was forged, [12-524](#)’s “recorded deed” requirement requires only that the deed purports to operate as a conveyance and is not void on its face.” [Estate’s Appendix at pgs. 5–6]. As such, the Deed satisfied this requirement because it contained the Property’s description and Magdalena’s and Isidro’s notarized signatures. [Estate’s Appendix at pgs. 5–6].

The trial court emphasized [§ 12-525](#) to support its finding, explaining the trial court “is not free to impose a forgery exclusion” when the Legislature has chosen to impose such an exclusion in similar statutes—but not the one at issue. [Estate’s Appendix at pg. 5].

Magdalena asked the trial court to reconsider its First Order in September 2021, urging the trial court to apply the Hawaiian standard where a party can claim that a recorded deed is forged to escape the applicable statute of limitations (“Motion for Reconsideration”). [Estate’s Appendix at pg. 22]. Magdalena further asked the Court to apply equitable tolling to her quiet title claim—an argument that Magdalena failed to raise in her Response to First Motion for Summary Judgment and an

argument that the trial court did not consider when entering its First Order. [Estate’s Appendix at pgs. 23–26].

Magdalena passed away shortly after filing her Motion for Reconsideration and the Estate assumed Magdalena’s role as the real party in interest. The trial court eventually denied the Motion for Reconsideration on June 30, 2022 (“Order denying Motion for Reconsideration”).

IV. The Estate Refuses to Release the Lis Pendens on the Property

After Renee prevailed on her quiet title claim, the Estate refused to release its Lis Pendens on the Property, arguing that it still possessed the right to pursue its remaining clouded title claim under § [33-420](#).

In November 2022, Renee moved for summary judgment on the parties’ competing clouded title claims under § [33-420](#) (“Second Motion for Summary Judgment”). The Estate responded to Renee’s Second Motion for Summary Judgment (“Response to Second Motion for Summary Judgment”) but failed to raise any arguments concerning § [12-543](#)’s discovery rule or the doctrine of equitable tolling. [See Appendix at pgs. 296–303]. As part of its Response to Second Motion for Summary Judgment, the Estate also moved for summary judgment on the parties’ competing quiet title claims (“Cross-Motion for Summary Judgment”).

The trial court entered summary judgment in Renee’s favor on the parties’ competing § [33-420](#) claims. In its February 17, 2023, Minute Entry (“Second

Order”), the trial court emphasized that its First Order—quieting the Property’s title in Renee’s favor—barred Magdalena and the Estate from bringing a § [33-420](#) claim because “Magdalena was not an owner or beneficial title holder of the [Property]” when she filed suit. [Appendix at pgs. 305–06]. The trial court’s Second Order did not rule on the Estate’s equitable tolling argument as it relates to the parties’ competing § [33-420](#) claims because the Estate failed to raise this argument in its Response to Second Motion for Summary Judgment.

V. The Court of Appeals Affirms the Trial Court’s Decision

The Estate appealed the trial court’s First Order, Order denying Motion for Reconsideration, Second Order, and final judgment in Renee’s favor on all outstanding claims. As relevant to this Court’s review, the Estate argued that the trial court erred by: (1) applying § [12-524](#)’s five-year statute of limitations to an allegedly forged Deed; and (2) declining to apply the doctrine of equitable tolling to Magdalena’s quiet title claim and § [33-420](#) claim. [Appendix at pgs. 130–33, ¶¶ 15, 19, 20, and 24].

The Court of Appeals affirmed the trial court’s prior decisions (“Opinion”). More specifically, the Court of Appeals confirmed § [12-524](#)’s five-year statute of limitations applies to void—or forged—deeds if the deed at issue is “not void upon its face” and “purports to operate as a conveyance.” [See Appendix at pg. 130, ¶ 16]. To support this position, the Court of Appeals cited this Court’s prior opinions in

1917, 1967, and 1981, confirming that a legitimately void deed can still satisfy § [12-524](#)'s "recorded deed" requirement if the deed at issue appears facially valid. [*See* Appendix at pg. 130, ¶ 16]. The Court of Appeals expressly rejected the Estate's reliance on non-binding authority:

The Arizona legislature did not proscribe the benefits of § [12-524](#) to those who hold title through an alleged forged deed, as it did in the *very next section of the same statute*. Compare A.R.S. § [12-524](#) with A.R.S. § [12-525](#) (providing a five-year limitation period for claims to recover real property from a person in . . . possession but *expressly prohibiting the benefits of the provision to those who claim title through a forged deed*).

[*See* Appendix at pg. 131, ¶ 18 (Emphasis added)].

The Court of Appeals affirmed the trial court's Second Ruling on the parties' § [33-420](#) claims but for a different rationale than the trial court. More specifically, the Court of Appeals held the trial court improperly focused on when Magdalena "filed suit" for tolling purposes under § [12-550](#)'s four-year statute of limitations when the trial court should have instead focused on when the allegedly forged Deed was filed with the recorder's office. [*See* Appendix at pgs. 132–33, ¶¶ 22, 23]. The Court of Appeals nevertheless affirmed the trial court's ruling because "Magdalena brought the suit more than a decade after" the Deed was recorded in 2003 and well beyond § [12-550](#)'s four-year statute of limitations. [*See* Appendix at pgs. 132–33, ¶ 23].

The Court of Appeals also confirmed the trial court’s First Ruling, finding Magdalena failed to provide any evidence controverting the fact Renee paid the Property’s taxes. [See Appendix at pgs. 131–32, ¶ 19 (Emphasis added)]. As for the trial court’s decision not to apply the doctrine of equitable tolling to Magdalena’s claims, the Court of Appeals held the Estate waived this argument as it relates to its quiet title claim because the Estate never raised it in its Response to First Motion for Summary Judgment. [See Appendix at pg. 132, ¶ 20; see also Estate’s Appendix at pgs. 27–41]. The Court of Appeals similarly held that the Estate waived its equitable tolling argument as it relates to the Estate’s § [33-420](#) claim because the Estate never raised it in its Response to Second Motion for Summary Judgment. [See Appendix at pgs. 296–303].

ARGUMENT

This Court granted the Estate’s Petition in part to answer two questions: (1) whether a party can escape § [12-524](#)’s five-year statute of limitations by claiming a deed is forged; and (2) whether the Court of Appeals correctly held that the Estate waived its equitable tolling argument.

I. The Court of Appeals Correctly Held an Allegedly Forged Deed Satisfies § 12-524’s “Recorded Deed” Requirement

The Estate argues that “forged deeds are void [on their face] and cannot pass title.” [See Petition at pg. 8]. As such, it would seem, an allegedly forged Deed can never satisfy § [12-524](#)’s “recorded deed” requirement. [See Petition at pg. 5]. The

Estate conflates two distinct legal issues when only one is pending before this Court. Namely, whether the Estate can evade § [12-524](#)'s five-year statute of limitations by simply alleging a recorded Deed—that otherwise “*purport[ed] to operate as a conveyance*” of the Property—contains a fraudulent signature. See [Quality Plastics, Inc. v. Moore](#), 131 Ariz. 238, 241–42 (1981) (emphasis added). [See Appendix at pg. 1].

It is indisputable that a forged deed can still convey title if a party fails to timely challenge the forged deed. A party may bring a quiet title claim to recover a lot from another party possessing a recorded deed for the same lot, including a recorded forged deed. See A.R.S. § [12-524](#). But if a party wishes to do so, it must bring its claim within five years of the allegedly forged deed's recording. See [Nicholas v. Giles](#), 102 Ariz. 130, 134 (1967). A party opposing such a claim can establish the claim is time-barred under § [12-524](#) if the opposing party possesses a “recorded deed” for the property—along with several other requirements that are not at issue in this review but nevertheless fully briefed in Renee's Response Opposing Petition for Review. See [id.](#) at 133.

Arizona case law has consistently confirmed that even a void deed satisfies § [12-524](#)'s “recorded deed” element if the deed at issue “purports to operate as a conveyance.” See [Quality Plastics, Inc.](#), 131 Ariz. at 241–42 (quoting [Sparks v. Douglas](#), 19 Ariz. 123, 127 (1917) (internal quotation marks omitted)). In other

words, the deed at question only needs to *attempt* to convey the property at issue by including the basic information generally contained in a deed transferring property, such as the legal description of the property it governs, the parties to the transaction, and notarized signatures. See [Henderson v. Tejada](#), 26 Ariz. App. 462, 466 (App. 1976) (a deed is “not void upon its face, [when], tested by itself, has all the constituent parts knitted into that kind of an instrument”).

The Estate attempts to distinguish [Quality Plastics](#) from the case at hand, arguing that [Quality Plastics](#)’ stated purpose of § [12-524](#)’s “recorded deed” element seeks to provide “notice of the adverse claim” to the property at issue and Renee’s allegedly fraudulent conduct thwarted that purpose. [See Petition at pg. 6]. But the Estate fails to explain *how* the Deed at issue failed to further [Quality Plastics](#)’ notice requirement when the Deed was recorded for seventeen years before Magdalena brought her quiet title claim and the Deed contained “all the constituent parts knitted into” a standard deed. See [Henderson](#), 26 Ariz. App. at 466.

The Estate instead relies on [Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Trust of Phoenix, Inc.](#), to support its broad contention that an allegation of fraud relieves an aggrieved party from searching public records to discover the fraud. 197 Ariz. 535, 541 (App. 2001) (“[Baker](#)”). [See Petition at pg. 6]. More specifically, the Estate cites [Baker](#) to support its contention that “constructive notice . . . from public records” is never a defense to fraud. [See Petition at pg. 6]. But [Baker](#)

concerned a defendant attempting to avoid liability under a common law fraud claim by arguing that plaintiff should have searched publically available entity documents. See *id.* at 541, ¶ 23. In other words, *Baker* did not address § [12-524](#) at all—let alone the litany of Arizona cases confirming that, unlike *Baker*, publically recorded documents are critical to the statute of limitations analysis. See *Nicholas*, 102 Ariz. at 133.

The Estate’s reliance on *Baker*, and nearly twenty other foreign cases that do not interpret § [12-524](#), is therefore misplaced.

II. The Court of Appeals Properly Declined to Review Equitable Tolling

The second issue this Court granted review on concerns the Court of Appeals’ holding that the Estate waived its ability to challenge the trial court’s decision not to apply the doctrine of equitable tolling to either Magdalena’s quiet title claim or her § [33-420](#) claim. [See Appendix at pgs. 132–33, ¶¶ 20, 24]. The Court of Appeals’ Opinion is proper for a number of reasons.

A. The Estate Waived Equitable Tolling on the Quiet Title Claim

First, the Estate argues that the Court of Appeals improperly held that the Estate waived its equitable tolling argument concerning the parties’ competing quiet title claims. [See Petition at pg. 13 (“The opinion incorrectly held that the Estate did not raise equitable tolling in the trial court. (Opinion ¶ 20).”).]. The Estate exerts minimal effort explaining the procedural posture leading up to the Court of Appeal’s

Opinion or addressing why the Court of Appeals declined to consider an argument Magdalena raised for the first time in a motion for reconsideration.

In April 2021, Renee moved for summary judgment on the parties' competing quiet title claims and § [33-420](#) claims. In her Response to First Motion for Summary Judgment, Magdalena urged the trial court to apply the "discovery rule" under § [12-543](#) or the doctrine of equitable tolling, postponing the accrual of Magdalena's § [33-420](#) claim. [*See* Estate's Appendix at pgs. 37–38]. But Magdalena's Response to First Motion for Summary Judgment lacked any argument that § [12-543](#)'s discovery rule or the doctrine of equitable tolling should apply to her quiet title claim. [*See generally* Estate's Appendix at pgs. 27–41]. As such, the trial court's entry of summary judgment on the parties' competing quiet title claims in its First Order did not address Magdalena's nonexistent request to apply equitable tolling to Magdalena's quiet title claim. [*See generally* Estate's Appendix at pgs. 5–6]. Nor did the trial court's First Order address Magdalena's request to apply equitable tolling to her § [33-420](#) claim because the trial court's First Order declined to enter summary judgment on the parties' competing § [33-420](#) claims.

Magdalena asked the trial court to reconsider its First Order in September 2021, dedicating a substantial portion of her Motion for Reconsideration addressing § [12-524](#)'s applicability to allegedly fraudulent deeds. [*See, e.g.*, Estate's Appendix at pgs. 19–23]. Magdalena then, for the first time, asked the Court to apply equitable

tolling to her quiet title claim. [*Compare* Estate’s Appendix at pgs. 27–41 (Magdalena’s Response to First Motion for Summary Judgment lacking any request to apply equitable tolling to her quiet title claim), with Estate’s Appendix at pgs. 19–25 (Magdalena’s Motion for Reconsideration asking the trial court to apply equitable tolling to her quiet title claim even though she did not ask the trial court to do so in her Response to First Motion for Summary Judgment)].

The Court of Appeals properly declined to review: (1) an argument Magdalena did not assert in her Response to First Motion for Summary Judgment; (2) an argument the trial court did not address in its First Order; and (3) an argument Magdalena raised for the first time in a Motion for Reconsideration. See [Ramsey v. Yavapai Family Advocacy Ctr.](#), 225 Ariz. 132, 137, ¶ 18 (App. 2010) (“Generally, [the Court of Appeals] *do[es] not consider arguments raised for the first time in a motion for reconsideration.*”) (emphasis added).

To the extent the Estate attempts to challenge the Trial Court’s denial of Magdalena’s Motion for Reconsideration, this Court should disregard those challenges because the Estate has failed to demonstrate why the trial court’s decision not to entertain an argument raised for the first time in a Motion for Reconsideration was “manifestly unreasonable.” See [McGovern v. McGovern](#), 201 Ariz. 172, 175, ¶ 6 (App. 2001) (denial of motion to reconsider reviewed for abuse of discretion); see

also *Englert v. Carondelet Health Network*, 199 Ariz. 21, 27, ¶ 14 (App. 2000) (explaining when a trial court abuses its discretion).

B. The Estate Waived Equitable Tolling on the § 33-420 Claim

Second, the Estate argues that the Court of Appeals improperly held that the Estate waived its equitable tolling argument concerning the parties' competing § [33-420](#) claims. [See Petition at pg. 15 (“The opinion incorrectly states that the Estate has waived any argument related to equitable tolling [on its § [33-420](#) claim] . . . (Opinion ¶ 24).”)]. To support this argument, the Estate argues that it properly asserted its equitable tolling theory—concerning its § [33-420](#) claim—in the Estate's: (1) Response to First Motion for Summary Judgment; and (2) reply in support of the Estate's Cross-Motion for Summary Judgment. Both of these arguments can be quickly disposed of.

i. The Estate never Reasserted its Equitable Tolling Argument

Renee's First Motion for Summary Judgment asked the trial court to enter summary judgment on the parties' competing quiet title claims and § [33-420](#) claims. Renee does not dispute that Magdalena's Response to First Motion for Summary Judgment asked the trial court to apply equitable tolling to Magdalena's § [33-420](#) claim to preclude summary judgment. [See Estate's Appendix at pgs. 37–38]. But the trial court's First Order did not enter summary judgment on the parties' competing § [33-420](#) claims. [Estate's Appendix at pgs. 4–6]. Nor did the trial Court's

First Order rule on the merits of the equitable tolling argument as it relates to the Estate's § [33-420](#) claim. [Estate's Appendix at pgs. 4–6].

The Estate then failed to reassert its equitable tolling argument in its Response to Second Motion for Summary Judgment or Cross-Motion for Summary Judgment—the briefing that the trial court ultimately ruled on before issuing its Second Order and granting summary judgment in Renee's favor on the parties' § [33-420](#) claims. [See Appendix at pgs. 296–303]. As such, the Estate cannot argue it properly preserved its equitable tolling defense by raising the defense in prior briefing that did not resolve the § [33-420](#) claim (e.g., Response to First Motion for Summary Judgment)—and then failing to reassert its equitable tolling defense in briefing that did resolve the § [33-420](#) claim (e.g., Response to Second Motion for Summary Judgment/Cross-Motion for Summary Judgment). See, e.g., [Ruesga v. Kindred Nursing Centers, L.L.C.](#), 215 Ariz. 589, 599–600, ¶¶ 37–39 (App. 2007) (party waives argument on appeal “by failing to reurge” argument raised in prior motion that did not resolve the issue); see also, e.g., [Aritex Land Co. v. Baker](#), 14 Ariz. App. 266, 273 (1971) (“[A]ppellants are precluded from urging a defense on appeal which they abandoned at trial.”).

And even assuming the Estate bore no obligation to reassert its equitable tolling argument raised in the Response to First Motion for Summary Judgment in its Response to Second Motion for Summary Judgment, it is indisputable the Court's

Second Order resolving the § [33-420](#) claims did not rule on an equitable tolling argument. See [Ruesga](#), 215 Ariz. at 600, ¶ 39 (defense is waived when trial court did not rule on the defense).

ii. The Estate Cannot Raise New Theories in a Reply

The Estate next argues that it properly asserted its equitable tolling theory in its *reply* in support of the Estate’s Cross-Motion for Summary Judgment. [Petition at pg. 15]. But appellate courts “will not consider arguments made for the first time in a reply brief.” See [Dawson v. Withycombe](#), 216 Ariz. 84, 111, ¶ 91 (App. 2007).

C. *The Estate’s Arguments Lack Evidentiary Support*

Finally, even if this Court finds that the Estate preserved its equitable tolling arguments on appeal, the Estate fails to demonstrate any compelling reason for why the trial court should have applied equitable tolling to any of the competing claims at issue.

The Estate suggests that “Renee’s *affirmative acts* of concealed fraud misled . . . Magdalena from” discovering the Deed. [See Petition at pg. 13 (emphasis added)]. As such, the Estate reasons that the statute of limitations should not have begun tolling “until Magdalena acquired actual knowledge [of the Deed] in 2020.” [See Petition at pg. 13]. But the Estate fails to state with any particularity or demonstrate with supporting evidence what “affirmative acts” Renee committed, how these “affirmative acts” prevented Magdalena from locating a recorded deed

over a seventeen-year period, or what changed in 2020 allowing Magdalena to suddenly discover this seventeen-year old recorded Deed.

When Isidro passed away in 2012 and probate was administered to locate and allocate assets, the Property was never addressed. To date, Magdalena has similarly failed to produce *any* evidence confirming she made payments to acquire the Property, spent any money to maintain the Property, or paid any of the Property’s taxes. Magdalena’s failure to inquire into a publicly recorded document over a seventeen-year period—for a Property she allegedly thought she owned—does not justify equitable tolling. *See, e.g., McCloud v. Ariz. Dept. of Pub. Safety*, 217 Ariz. 82, 88, ¶ 16 (App. 2007) (equitable tolling should “be used only sparingly” in “extraordinary circumstances”); *see also, e.g., Manicom v. CitiMortgage, Inc.*, 236 Ariz. 153, 158, ¶ 16 (App. 2014) (recorded deed provides public notice of ownership and party seeking to establish ownership interest in a property bears burden of searching public records for a recorded deed).

CONCLUSION

Renee respectfully asks the Court to affirm the Court of Appeals’ Opinion and to award Renee her attorneys’ fees and costs pursuant to [ARCAP 21](#) and A.R.S. §§ [12-1103](#) and [33-420](#).

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DATED this 27th day of January, 2025.

TIFFANY & BOSCO, P.A.

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